

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KATHRYN JANE HAUSER,

Defendant-Appellant.

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UNPUBLISHED

October 29, 2002

No. 239688

Oakland Circuit Court

LC No. 2000-173663-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant pleaded no contest to causing death while operating a vehicle under the influence of a controlled substance, MCL 257.625(4), for which she was sentenced as an habitual offender, second offense, MCL 769.10, to seven to fifteen years in prison. She appeals her sentence by delayed leave granted. We remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends on appeal that the trial court improperly scored offense variables 3 and 5. MCL 777.33; MCL 777.35. “A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

The statute applicable to this offense provided that 100 points were to be assessed for offense variable (OV) 3, but only if homicide was not the sentencing offense. MCL 777.33(1), (2)(b). The statute defined the term “homicide” to mean “any crime in which the death of a human being is an element of that crime.” MCL 777.1(c). Because a person’s death was an element of the crime charged, the court could not assess 100 points. However, the prosecutor argued, and the court agreed, that it could assess a lesser number of points based on injury to the victim. Defendant contends that the trial court misinterpreted the statute. We review an issue of statutory interpretation and application de novo on appeal. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998).

The rules of statutory construction require the courts to give effect to the Legislature’s intent. This Court should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses.

*Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). If the language is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Statutory language is to be given its ordinary and generally accepted meaning, although if the statute defines a given term, that definition is controlling. *Id.* at 135-136. "Statutory language should be construed reasonably, keeping in mind the objective and purpose of the act." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

The court must "afford the statute an interpretation that achieves harmony between and among specific provisions to provide a reasonable meaning." *Messenger v Dep't of Consumer & Industry Services*, 238 Mich App 524, 533; 606 NW2d 38 (1999). "Furthermore, nothing will be read into a statute that is not within the manifest intent of the Legislature as gathered from the act itself." *In re S R*, *supra* at 314.

The statute in effect offered the following scoring options for OV 3: (a) 100 points if a victim was killed, (b) 25 points if a victim sustained a life-threatening or permanent incapacitating injury, (c) 10 points if a victim sustained bodily injury requiring medical treatment, (d) 5 points if a victim sustained bodily injury not requiring medical treatment, or (e) 0 points if a victim was not injured. MCL 777.33(1). The statute reflects a graduated scale for assessing the harm to the victim. Given that death is assessed the highest number of points and no injury at all is assessed no points, the plain and most reasonable meaning of the intervening sections is that they are meant to apply where there is some harm short of death. Otherwise, a death for which points cannot be assessed under subsection 33(2)(b) could be assessed points under subsections 33(1)(b), (c), or (d) if the victim died after sustaining some injury. If that were the intent of the Legislature, it would not have limited the assessment of points for a victim's death to those crimes in which death of a person is not an element, but would have eliminated subsection 33(2)(b) altogether.

This interpretation is supported by the October 2000 amendment of the statute. The amendment provides for additional points for causing death while operating under the influence, which offense would otherwise not be assessed any points. Because the victim did not survive the offense with serious injuries but died, the trial court erred in scoring OV 3.<sup>1</sup>

Defendant also contends that the court should not have assessed any points for OV 5. The statute authorized the assessment of fifteen points if a member of a homicide victim's family suffered "[s]erious psychological injury requiring professional treatment." MCL 777.35(1)(a). Fifteen points are also to be assessed "if the serious psychological injury to the victim's family may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive." MCL 777.35(2).

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<sup>1</sup> We note that because the guidelines, consistent with our opinion, will not take into account the victim's death, the trial court may have a valid reason for departing from the guidelines at resentencing. MCL 769.34(3).

The victim's daughter stated that she had trouble sleeping and had sought counseling and medication from her physician. While her psychological problems may have been a common reaction to the sudden loss of a loved one and may not have been so serious as to be debilitating, they were sufficient to support the scoring of OV 5. See *Elliott, supra* at 262; *People v Moseler*, 202 Mich App 296, 300; 508 NW2d 192 (1993).

Because the trial court erred in scoring OV 3 and correction of the error would result in a guidelines range below the minimum sentence imposed by the trial court, we remand for resentencing.

Remanded for resentencing. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra